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AUTHOR Reynolds, Wm. Bradford
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ABSTRACT

The Assistant Attorney General of the Civil Rights Division, United States Department of Justice, comments on the state of disability policy in the United States as reflected in current laws and regulations. Interagency efforts within government are seeking to identify gaps in coverage, as well as duplications and overlap, in existing federal disability programs. Rather than attempting to embrace a single piece of vaguely worded, expansive legislation, bills tailored to specific problems will ultimately result in a more comprehensive set of protections for handicapped citizens. The passage of legislation to assure nondiscrimination in private sector employment is a top priority for action. Other areas needing attention are disincentives to work found in the social security programs, and discrimination in housing, education, federally assisted health care services, and social services. (JW)

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REMARKS

OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

CONFERENCE ON DISABILITY POLICY:
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OF EXCEPTIONAL CHILDREN AND YOUTH
OF THE
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I am delighted to be able to participate with you today at this conference on the state of disability policy in our nation. I am especially pleased with the broad focus of this conference. All too often our energies in shaping legal policy as civil rights advocates are narrowed by the adversarial nature of the judicial process. This conference represents a chance to stand back, to re-examine the policies that have been created, and, if necessary, to reformulate long-term goals or more immediate objectives.

For almost the past six years, I have worked on disability rights issues from the vantage point of the Justice Department's Civil Rights Division. I have witnessed close-up the many faces of discrimination that are set against persons with handicaps. Over 35 million people in this country are disabled by reason of some physical or mental handicapping condition. Of course, the mere existence of these handicapping conditions does not, for the overwhelming majority of these individuals, prevent them from interacting freely with others in society, or from performing the tasks that others perform on a daily basis. But, persons with handicaps are all too often not allowed to participate because of stereotypical notions held by others in society -- notions that have, in large measure, been created by ignorance and maintained by fear.

It is precisely these sorts of antiquated attitudes that have for too long stood in the doorway, blocking people with disabilities from entering the mainstream of American life. The

question for this conference is how to forge an effective, all-out assault on the existing stereotypes. Certainly attitudinal changes cannot be simply commanded or even legislated out of existence. No particular court order or single piece of legislation can alone change longstanding perceptions or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process is to increase contact between and among disabled people and their able-bodied peers. And an essential component of that effort is the development of a comprehensive set of laws supported by a comprehensible set of regulations, that all work together to promote the integration of disabled people into our communities, schools, and work places.

You have heard this morning about existing Federal civil rights laws, their strengths, weaknesses, and the gaps in coverage among them. A consensus that appears to be emerging is, quite candidly, that Federal disability programs - both civil rights statutes and Federal grant programs - are flawed. Various studies and reports have found these programs to be fragmented, duplicative, and even counterproductive.

This Administration is aware of, and concerned about, these problems. Officials from different agencies -- including the Departments of Justice, Education, Health and Human Services, and the Office of Management and Budget -- have been working quietly together with representatives of disabled citizens in an effort to identify specific problem areas and develop discrete, effective

policy initiatives. We have come to recognize existing Federal programs as a patchwork quilt in need of caring and careful repair. There are indeed gaps in coverage, and other failures, that "cry out" for a Federal response to the needs of disabled citizens -- a response that is at one time cohesive, coordinated, and comprehensive. The desired objective is a Federal disability policy that contributes to the independence and dignity of all disabled persons, allowing them to enjoy the birthright of all Americans.

There is, however, a cautionary note to be sounded. In recent years, the legislative strategy pursued by many (both within and outside the disability community) has endeavored to sweep within a single piece of legislation all manner of demands advanced by fragile coalitions of interest groups. Such overly ambitious efforts have faltered for the most part because, understandably, multiple pieces of the intricate puzzle do not fit together as neatly as originally anticipated. Moreover, against the demands of Gramm-Rudman-Hollings, Congress is becoming increasingly leery about passing vaguely-worded, expansive legislation that leaves to another day the difficult questions of funding and resource allocation among new programs.

Let me offer for consideration an alternative approach. There are on the disability agenda any number of discrete policies that can serve as separate legislative building blocks which ultimately add up to a more comprehensive set of protections for

handicapped citizens. I would think a piecemeal legislative strategy could, if carefully devised and ardently pursued, achieve much more, in much less time, and with far more consensus support. Let me flag what I see as some of the more important ingredients.

Perhaps the most glaring omission from coverage in the landscape of disability rights laws is, in my judgment, in the area of employment coverage in the private sector. While persons who work for the Federal government, who work in federally assisted programs or activities, or who work for certain Federal contractors are protected from employment discrimination on the basis of handicap, most other workers are not so protected. There is no parallel in the disability area to title VII of the Civil Rights Act of 1964, the landmark statute that prohibits discrimination on the basis of race, color, national origin, sex, and religion by all employers, both private and public, with 15 or more employees, without regard to their receipt of Federal funds or contracts. I favor the passage of legislation that will duplicate this coverage for disabled persons. Further, I think that such legislation should adopt the now-proven standard under section 504 of the Rehabilitation Act of 1973 - the concept that nondiscrimination includes the requirement that an employer make reasonable accommodation to the known mental or physical impairments of qualified disabled persons as long as making them would not result in an undue hardship on the operations of the employer.

There has been considerable quiet discussion within the Administration on an array of proposals extending the prohibition

of discrimination on the basis of handicap to the private sector. Some suggest amending title VII of the 1964 Civil Rights Act; others favor amending section 504 of the Rehabilitation Act of 1973; and still others argue for creating a new, free-standing piece of legislation. There is as yet no consensus in the Administration on the appropriate vehicle for legislative action nor on the exact scope of the legislation. Consideration of this issue remains, however, a top priority for action at the highest levels of the Administration.

The extension of employment coverage will be even more meaningful when the Administration completes its review of the major disincentives to work found in the Social Security programs. These programs - Medicaid, Medicare, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) - provide income support and health and social services to millions of disabled persons in this country. Unfortunately, the way in which these programs have been structured tends to operate to discourage employment of persons with disabilities. Studies have shown that disabled participants in these programs who could become employed do not seek employment opportunities because their expected salaries will not make up for the loss of health care benefits or social services. Once off the SSI or SSDI rolls, the disabled person is no longer eligible for Medicare or Medicaid, despite the fact that the person will not be able to obtain private medical insurance coverage for preexisting conditions

of disability. The Administration is committed to removing major work disincentives in the Social Security system and fostering the return to work of those persons with disabilities with the desire and ability to do so.

Another major gap in coverage in the disability civil rights area is housing. Clearly section 504 forbids discrimination on the basis of handicap in federally assisted housing programs - whether the housing in question is federally assisted public housing operated by recipients of HUD funds, federally-assisted housing for farmers funded by Agriculture's recipients, or federally-assisted housing operated by colleges and universities receiving assistance from the Department of Education. However, most of this country's housing stock is outside the scope of section 504. The lack of appropriate housing for disabled persons often results in unnecessary, and quite expensive, institutionalization of disabled persons and restricts their ability to live in their own community. The Administration now favors, and is actively seeking to have passed, an amendment to the Federal Fair Housing Act that will extend its protections to discrimination on the basis of handicap.

The Department is also in favor of broadening section 504's reach in the education area by responding legislatively to the Supreme Court's decision in Grove City College v. Bell, 465 U.S. 555 (1984). In Grove City, the Supreme Court interpreted the "program or activity" language in title IX of the Education

Amendments of 1972, a statute parallel to section 504, and found that the statute prohibited discrimination in a program-specific, not an institution-wide, fashion. In light of evidence that this view has left disabled students in the education area - at elementary, secondary, and postsecondary levels - subject to discriminatory practices, the Administration has supported a bill that will extend section 504's reach to all the activities of the educational institution.

There are, of course, other initiatives worthy of consideration -- for example, legislation to ensure that handicapped infants are not denied federally assisted health care services where their parents refuse to allow medically indicated treatment on the basis of handicap; and legislation to provide developmentally disabled persons with federally assisted social services in home and community-based environments, just to mention two. What I want to reemphasize today, however, is our goal: equipping the landscape of Federal disability laws so that it is well-suited for our vision of integrating disabled people into everyday American life for the rest of the 1980's and the decades beyond.

Let me conclude on a positive note by noting a few legislative accomplishments of the past year following the piecemeal strategy I have suggested. Thus, the Federal Aviation Act has been amended to prohibit discrimination on the basis of handicap in air transportation. Congress has made it clear that the Eleventh Amendment to the Constitution does not immunize

states from suit under section 504. The tax deduction for the cost of eliminating architectural and transportation barriers in the tax code has been made permanent. The Education of the Handicapped Act has been extended for three years and now contains stronger provisions concerning early intervention services for infants and toddlers from birth to 2 years of age. Provision has been made for providing attorneys fees under EHA.

The pace of improvements to this nation's system of protections for persons with handicaps is accelerating. Still this Administration shares with many of you an abiding dissatisfaction with the network of protections that currently exist. We seek to make this hodgepodge of laws more comprehensive in scope and complete in their coverage. Our experience over the past six years has demonstrated to us that a surgical approach to legislation -- supporting narrow bills tailored to specific problems -- is not only the prudent approach but ultimately an effective and successful one. We look forward to your support in this endeavor.

Thank You.